

Executive Summary IAU 27-2011

Prepared by Det. Sgt. Jo-Ann Distler

Allegation:

Unlawful Conduct/Violation of Department Rules - A complaint received from the Office of Commissioner of Police the Police Officer Edward Bienz and Police Officer Anthony DiLeonardo were involved in a road rage incident in Suffolk County which led to shots being fired by PO DiLeonardo striking Mr. Thomas Moroughan who was driving a taxi cab.

Date and Location:

➤ February 27, 2011 1:15 AM. In front of 422 Oakwood Road Huntington, NY

Accused Members/Prior Complaints:

- Police Officer Edward Bienz, Serial Number 8943, Shield Number 3466, Third Precinct.
2 Complaints: 1 for Improper Tactics = 1 Unfounded, 1 for Violation of Department Rules = 1 Founded.
Five years of service.
- Police Officer Anthony DiLeonardo, Serial Number 9103, Shield Number 3632, Third Precinct
1 Complaint: 1 for Racial/Ethnic Bias = 1 Exonerated.

Synopsis:

➤ On February 27, 2011 PO Bienz and PO DiLeonardo were involved in a road rage incident with Mr. Thomas Moroughan, who was driving a taxi cab and had his girlfriend with him in the Huntington area. The incident escalated from a verbal dispute when PO DiLeonardo exited his vehicle and shot at Mr. Moroughan as he was attempting to leave the area. PO DiLeonardo fired five rounds from his off-duty S & W 38 caliber revolver, striking Mr. Moroughan twice, once in the chest and once in the left arm. One bullet fragmented and lodged in the rear of the taxi cab and two bullets were not recovered. PO DiLeonardo then ran at the taxi cab, with an empty weapon and shattered the driver's side window with the butt of his weapon, striking Mr. Moroughan in the nose and facial area causing Mr. Moroughan's nose to break and causing contusions to his face. PO DiLeonardo then dropped his weapon into the rear of Mr. Moroughan's vehicle as Mr. Moroughan was able to leave the area drive himself to Huntington Hospital. PO Bienz exited his vehicle when he heard the verbal dispute and approached the taxi cab with PO DiLeonardo after PO DiLeonardo had fired his weapon. PO Bienz and PO DiLeonardo were knocked down by Mr. Moroughan's taxi and he was leaving the area.

Findings:

- **Founded:** That PO DiLeonardo committed Unlawful Conduct and violated Department Rules when he engaged in a road rage incident with Mr. Moroughan which escalated when PO DiLeonardo shot Mr. Moroughan and assaulted him. PO DiLeonardo committed 11 counts of Unlawful Conduct and violated 8 Department Rules.
- **Founded:** That PO Bienz committed Unlawful Conduct and violated Department Rules when he engaged in a road rage incident with Mr. Moroughan which escalated when PO DiLeonardo shot Mr. Moroughan and assaulted him. PO Bienz committed 2 counts of Unlawful Conduct and violated 3 Department Rules.

Recommendations:

That PO DiLeonardo is charged departmentally with:

Eleven (11) counts of Unlawful Conduct:

- Attempted Assault First Degree (C Felony)
- Criminal Use of a firearm Second Degree (C Felony)
- Assault Second Degree (D Felony)
- Assault Second Degree (D Felony)

- Assault Third Degree (A Misdemeanor)
- Reckless Endangerment First Degree (D Felony)
- Reckless Endangerment First Degree (D Felony)
- Reckless Endangerment First Degree (D Felony)
- Criminal Mischief Second Degree (A Misdemeanor)
- Reckless Driving (Misdemeanor)
- Driving While Ability Impaired (Violation)

Eight (8) counts of violating Department Rules

- Three counts of conduct unbecoming an officer
- Unfit for duty

- Firing a shot at a moving vehicle

- Using deadly physical force in circumstances that present a grave risk of death or serious injury

- Recklessly using deadly physical force

- Failing to secure his weapon

That PO Bienz is charged departmentally with:

Two (2) counts of Unlawful Conduct:

- Reckless Driving (Misdemeanor)

- Driving While Ability Impaired (Violation)

Three (3) counts of violating Department Rules

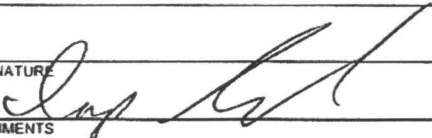

- Conduct unbecoming an officer

- Unfit for duty

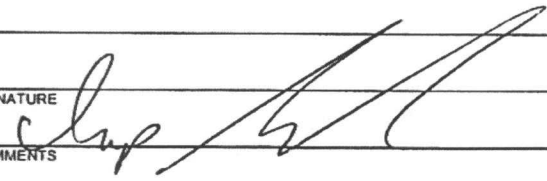
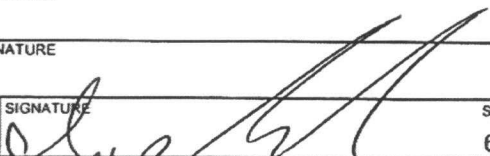
- Failing to carry his department issued shield

**POLICE DEPARTMENT, COUNTY OF NASSAU, NEW YORK
CIVILIAN COMPLAINT DISPOSITION**

PCD-41-REV-1-04

DATE August 1, 2012		CIVILIAN COMPLAINT NO 185-2011		IAU NO 27-2011	
COMPLAINANT'S LAST NAME Commissioner of Police				HOME/CELL PHONE NO 516 573-7000	
COMPLAINANT'S ADDRESS 1490 Franklin Avenue		VILLAGE Mineola		STATE NY	
				ZIP CODE 11501	
SUBJECT MEMBER PO	RANK PO	LAST NAME DiLeonardo	FIRST NAME Anthony	SERIAL NO 9013	<input checked="" type="checkbox"/> CHECK IF MORE THAN ONE SUBJECT AND PREPARE ADDITIONAL FORM FOR EACH SUBJECT
COMPLAINT 1 <input type="checkbox"/> UNPROFESSIONAL CONDUCT OR ATTITUDE <input type="checkbox"/> EXCESSIVE USE OF FORCE <input checked="" type="checkbox"/> UNLAWFUL CONDUCT <input type="checkbox"/> FALSE ARREST <input type="checkbox"/> RACIAL/ETHNIC BIAS <input type="checkbox"/> VIOLATION OF DEPARTMENT RULES <input type="checkbox"/> NEGLIGENCE OF DUTY <input type="checkbox"/> IMPROPER TACTICS/PROCEDURES <input type="checkbox"/> POLICE IMPERSONATOR <input type="checkbox"/> OTHER					
FINDINGS <input checked="" type="checkbox"/> FOUNDED <input type="checkbox"/> UNFOUNDED <input type="checkbox"/> UNDETERMINED <input type="checkbox"/> EXONERATED					
COMPLAINT 2 <input type="checkbox"/> UNPROFESSIONAL CONDUCT OR ATTITUDE <input type="checkbox"/> EXCESSIVE USE OF FORCE <input type="checkbox"/> UNLAWFUL CONDUCT <input type="checkbox"/> FALSE ARREST <input type="checkbox"/> RACIAL/ETHNIC BIAS <input checked="" type="checkbox"/> VIOLATION OF DEPARTMENT RULES <input type="checkbox"/> NEGLIGENCE OF DUTY <input type="checkbox"/> IMPROPER TACTICS/PROCEDURES <input type="checkbox"/> POLICE IMPERSONATOR <input type="checkbox"/> OTHER					
FINDINGS <input checked="" type="checkbox"/> FOUNDED <input type="checkbox"/> UNFOUNDED <input type="checkbox"/> UNDETERMINED <input type="checkbox"/> EXONERATED					
DESCRIBE INVESTIGATION AND DISPOSITION <input type="checkbox"/> NARRATIVE REPORT ATTACHED Findings were approved by Commissioner of Police, Thomas V. Dale, on July 31, 2012. For further details see IAU case number 27-2011.					
INVESTIGATING SUPERVISOR	COMPLAINANT CONTACTED WITH RESULTS OF INVESTIGATION? <input checked="" type="checkbox"/> YES, DATE CONTACTED <u>July 31, 2012</u> <input type="checkbox"/> NO, EXPLAIN				
	COMPLAINANT SATISFIED WITH INVESTIGATION/FINDING? EXPLAIN				
	LAST NAME Distler	FIRST NAME Jo-Ann			COMMAND IAU
	SIGNATURE			SERIAL NO. 6384	DATE August 1, 2012
COMMANDING OFFICER INVESTIGATING COMMAND	COMMENTS				
	SIGNATURE 			SERIAL NO. 6387	DATE August 2, 2012
DIVISION CHIEF	COMMENTS				
	SIGNATURE			SERIAL NO.	DATE
CHIEF OF DEPARTMENT	SIGNATURE			SERIAL NO.	DATE
	SIGNATURE 			SERIAL NO. 6387	DATE August 2, 2012
IAU COMMANDING OFFICER	SIGNATURE			IAU REVIEW BY (initials)	COMPUTER ENTRY (initials)

**POLICE DEPARTMENT, COUNTY OF NASSAU, NEW YORK
CIVILIAN COMPLAINT DISPOSITION**

DATE August 1, 2012		CIVILIAN COMPLAINT NO 185-2011		IAU NO 27-2011	
COMPLAINANT'S LAST NAME Commissioner of Police			FIRST NAME		HOME/CELL PHONE NO 516 573-7000
COMPLAINANT'S ADDRESS 1490 Franklin Avenue			VILLAGE Mineola	STATE NY	ZIP CODE 11501
SUBJECT MEMBER PO	RANK Bienz	LAST NAME Bienz	FIRST NAME Edward	SERIAL NO 8943	<input checked="" type="checkbox"/> CHECK IF MORE THAN ONE SUBJECT AND PREPARE ADDITIONAL FORM FOR EACH SUBJECT
COMPLAINT 1 <input type="checkbox"/> UNPROFESSIONAL CONDUCT OR ATTITUDE <input type="checkbox"/> EXCESSIVE USE OF FORCE <input checked="" type="checkbox"/> UNLAWFUL CONDUCT <input type="checkbox"/> FALSE ARREST <input type="checkbox"/> RACIAL/ETHNIC BIAS <input type="checkbox"/> VIOLATION OF DEPARTMENT RULES <input type="checkbox"/> NEGLIGENCE OF DUTY <input type="checkbox"/> IMPROPER TACTICS/PROCEDURES <input type="checkbox"/> POLICE IMPERSONATOR <input type="checkbox"/> OTHER					
FINDINGS <input checked="" type="checkbox"/> FOUNDED <input type="checkbox"/> UNFOUNDED <input type="checkbox"/> UNDETERMINED <input type="checkbox"/> EXONERATED					
COMPLAINT 2 <input type="checkbox"/> UNPROFESSIONAL CONDUCT OR ATTITUDE <input type="checkbox"/> EXCESSIVE USE OF FORCE <input type="checkbox"/> UNLAWFUL CONDUCT <input type="checkbox"/> FALSE ARREST <input type="checkbox"/> RACIAL/ETHNIC BIAS <input checked="" type="checkbox"/> VIOLATION OF DEPARTMENT RULES <input type="checkbox"/> NEGLIGENCE OF DUTY <input type="checkbox"/> IMPROPER TACTICS/PROCEDURES <input type="checkbox"/> POLICE IMPERSONATOR <input type="checkbox"/> OTHER					
FINDINGS <input checked="" type="checkbox"/> FOUNDED <input type="checkbox"/> UNFOUNDED <input type="checkbox"/> UNDETERMINED <input type="checkbox"/> EXONERATED					
DESCRIBE INVESTIGATION AND DISPOSITION <input type="checkbox"/> NARRATIVE REPORT ATTACHED Findings were approved by Commissioner of Police, Thomas V. Dale, on July 31, 2012. For further details see IAU case number 27-2011.					
INVESTIGATING SUPERVISOR	COMPLAINANT CONTACTED WITH RESULTS OF INVESTIGATION? <input checked="" type="checkbox"/> YES, DATE CONTACTED <u>July 31, 2012</u> <input type="checkbox"/> NO, EXPLAIN				
	COMPLAINANT SATISFIED WITH INVESTIGATION/FINDING? EXPLAIN				
	LAST NAME Distler		FIRST NAME Jo-Ann		COMMAND IAU
	SIGNATURE			SERIAL NO. 6384	DATE August 1, 2012
COMMANDING OFFICER INVESTIGATING COMMAND	COMMENTS				
	SIGNATURE 			SERIAL NO. 6387	DATE August 2, 2012
DIVISION CHIEF	COMMENTS				
	SIGNATURE			SERIAL NO.	DATE
CHIEF OF DEPARTMENT	SIGNATURE			SERIAL NO.	DATE
	SIGNATURE 			SERIAL NO. 6387	DATE August 2, 2012
IAU COMMANDING OFFICER	SIGNATURE			IAU REVIEW BY (Initials)	COMPUTER ENTRY (Initials)



POLICE DEPARTMENT
COUNTY OF NASSAU, NEW YORK

INTERNAL CORRESPONDENCE


DATE: August 1, 2012
TO: Commanding Officer, Third Precinct
FROM: Commanding Officer, Internal Affairs Unit
SUBJECT: INVESTIGATIVE FINDINGS; IAU 27-2011, CIVILIAN COMPLAINT 185-2011
RE: POLICE OFFICER EDWARD BIENZ, SERIAL NUMBER 8943, SHIELD
NUMBER 3466, THIRD PRECINCT.

COMPLAINT 1 ☐ UNPROFESSIONAL CONDUCT OR ATTITUDE ☐ EXCESSIVE FORCE
☒ UNLAWFUL CONDUCT ☐ FALSE ARREST
☐ RACIAL/ ETHNIC BIAS ☒ VIOLATION OF DEPARTMENT RULES
☐ NEGLIGENCE OF DUTY ☐ IMPROPER TACTICS

☐ OTHER (Explain) MISSING PROPERTY

FINDINGS - COMPLAINT 1

☒ FOUNDED ☐ UNFOUNDED ☐ UNDETERMINED ☐ EXONERATED


Edward Dordon
Inspector

CC: PO Bienz



POLICE DEPARTMENT
COUNTY OF NASSAU, NEW YORK
INTERNAL CORRESPONDENCE

DATE: August 1, 2012
TO: Commanding Officer, Third Precinct
FROM: Commanding Officer, Internal Affairs Unit
SUBJECT: **INVESTIGATIVE FINDINGS; IAU 27-2011, CIVILIAN COMPLAINT 185-2011
RE: POLICE OFFICER ANTHONY DILEONARDO, SERIAL NUMBER 9013,
SHIELD NUMBER 3632, THIRD PRECINCT.**

COMPLAINT 1 ☐ UNPROFESSIONAL CONDUCT OR ATTITUDE ☐ EXCESSIVE FORCE
☒ UNLAWFUL CONDUCT ☐ FALSE ARREST
☐ RACIAL/ ETHNIC BIAS ☒ VIOLATION OF DEPARTMENT RULES
☐ NEGLECT OF DUTY ☐ IMPROPER TACTICS

☐ OTHER (Explain) MISSING PROPERTY

FINDINGS - COMPLAINT 1

☒ FOUNDED ☐ UNFOUNDED ☐ UNDETERMINED ☐ EXONERATED

A handwritten signature in black ink, appearing to read "ED DORDON", is written over a horizontal line.

Edward Dordon
Inspector

CC: PO DiLeonardo

Executive Summary IAU 27-2011

Prepared by Det. Sgt. Jo-Ann Distler

Allegation:

Unlawful Conduct/Violation of Department Rules - A complaint received from the Office of Commissioner of Police the Police Officer Edward Bienz and Police Officer Anthony DiLeonardo were involved in a road rage incident in Suffolk County which led to shots being fired by PO DiLeonardo striking Mr. Thomas Moroughan who was driving a taxi cab.

Date and Location:

➤ February 27, 2011 1:15 AM. In front of 422 Oakwood Road Huntington, NY

Accused Members/Prior Complaints:

- Police Officer Edward Bienz, Serial Number 8943, Shield Number 3466, Third Precinct.
2 Complaints: 1 for Improper Tactics = 1 Unfounded, 1 for Violation of Department Rules = 1 Founded.
Five years of service.
- Police Officer Anthony DiLeonardo, Serial Number 9103, Shield Number 3632, Third Precinct
1 Complaint: 1 for Racial/Ethnic Bias = 1 Exonerated.

Synopsis:

➤ On February 27, 2011 PO Bienz and PO DiLeonardo were involved in a road rage incident with Mr. Thomas Moroughan, who was driving a taxi cab and had his girlfriend with him in the Huntington area. The incident escalated from a verbal dispute when PO DiLeonardo exited his vehicle and shot at Mr. Moroughan as he was attempting to leave the area. PO DiLeonardo fired five rounds from his off-duty S & W 38 caliber revolver, striking Mr. Moroughan twice, once in the chest and once in the left arm. One bullet fragmented and lodged in the rear of the taxi cab and two bullets were not recovered. PO Leonardo then ran at the taxi cab, with an empty weapon and shattered the driver's side window with the butt of his weapon, striking Mr. Moroughan in the nose and facial area causing Mr. Moroughan's nose to break and causing contusions to his face. PO DiLeonardo then dropped his weapon into the rear of Mr. Moroughan's vehicle as Mr. Moroughan was able to leave the area drive himself to Huntington Hospital. PO Bienz exited his vehicle when he heard the verbal dispute and approached the taxi cab with PO DiLeonardo after PO DiLeonardo had fired his weapon. PO Bienz and PO DiLeonardo were knocked down by Mr. Moroughan's taxi and he was leaving the area.

Findings:

- **Founded:** That PO DiLeonardo committed Unlawful Conduct and violated Department Rules when he engaged in a road rage incident with Mr. Moroughan which escalated when PO DiLeonardo shot Mr. Moroughan and assaulted him. PO DiLeonardo committed 11 counts of Unlawful Conduct and violated 8 Department Rules.
- **Founded:** That PO Bienz committed Unlawful Conduct and violated Department Rules when he engaged in a road rage incident with Mr. Moroughan which escalated when PO DiLeonardo shot Mr. Moroughan and assaulted him. PO Bienz committed 2 counts of Unlawful Conduct and violated 3 Department Rules.

Recommendations:

That PO DiLeonardo is charged departmentally with:

Eleven (11) counts of Unlawful Conduct:

- Attempted Assault First Degree (C Felony)
- Criminal Use of a firearm Second Degree (C Felony)
- Assault Second Degree (D Felony)
- Assault Second Degree (D Felony)

- Assault Third Degree (A Misdemeanor)
- Reckless Endangerment First Degree (D Felony)
- Reckless Endangerment First Degree (D Felony)
- Reckless Endangerment First Degree (D Felony)
- Criminal Mischief Second Degree (A Misdemeanor)
- Reckless Driving (Misdemeanor)
- Driving While Ability Impaired (Violation)

Eight (8) counts of violating Department Rules

- Three counts of conduct unbecoming an officer

- Unfit for duty

- Firing a shot at a moving vehicle

- Using deadly physical force in circumstances that present a grave risk of death or serious injury

- Recklessly using deadly physical force

- Failing to secure his weapon

That PO Bienz is charged departmentally with:

Two (2) counts of Unlawful Conduct:

- Reckless Driving (Misdemeanor)

- Driving While Ability Impaired (Violation)

Three (3) counts of violating Department Rules

- Conduct unbecoming an officer

- Unfit for duty

- Failing to carry his department issued shield

IAU 27 - 2011

Date Complaint Received: June 6, 2011

Complainant: COP

Complaint Tracking Number: 185-2011

Date of Incident: June 6, 2011

Accused: P.O. Edward Bienz, Serial 8943, Shield 3466
Third Precinct
P.O. Anthony DiLeonardo, Serial 9013, Shield 3632
Third Precinct

Accused's Attorney: Willard Miller

Nature of Allegation: Unlawful Conduct
Violation of Department Rules

Findings: Founded

Recommendations: P.O. DiLeonardo – 19 PDCN Form 209's
P.O. Bienz – 5 PDCN Form 209's

Investigation submitted
To Commissioner of Police
For Review:

District Attorney Review: N/A

Disciplinary Charges: Yes

Final Disposition: Close and File

Investigated by: Detective Sergeant Jo-Ann Distler
Detective Lieutenant Ralph Hoffman



INDEX – IAU 27 - 2011

	<u>PAGE</u>
Summary	1-58
Findings	59-83
Recommendations	84-96
Besares, Ruti Statement of	124
Bienz, Edward – Police Officer	
Indemnification Board Determination	695-696
Medical Records	254-267
Photograph	350
Statement of	131-133
Workers' Compensation Report EC-2	294-301
Bienz, Jillian SCPD Statement of	114-116
Citizen Complaint Summary	106-107
Cornia, Sophia SCPD Statement of	117-119
Covais, Michael – Police Officer Statement of	130
DeMartinis, John – Detective Sergeant Interview of	104-105
DiLeonardo, Anthony – Police Officer	
Indemnification Board Determination	697-706
Medical Record	237-253
Photograph of	349
Statement of	134-138
Training Record	227-233
Workers' Compensation Report EC-2	279-283

Dobrochasan, Dennis Statement of	125-128
Horace, Edmund – Inspector Interview of	100-102
Hunter, John P. – Assistant Chief Interview of	102-104
Jochen, Timothy Statement of	123
Klug, Eric Statement of	120-122
Lewis, Risco – Assistant District Attorney Interview of	97-98
Mondo, Kristie SCPD Statement of	111-113
Moroughan, Thomas 50-H Hearing	
Nassau County	494-694
Suffolk County	351-493
Medical Records	308-343
SCPD Statement of	108-110
Nassau County Indemnification Review Board Report	707-816
Nassau County Police Department	
ADM 1221 - Deadly Force Response Team	207-210
C-2 Form	277/293
Chief Sick Leave Report	
PO Bienz	305-307
PO DiLeonardo	284-286
Deadly Force Response Team Report	211-212
Member Hand Gun Report – PO DiLeonardo	217
PDCN 32SJ	223-226
PDCN 41 – Property Receipt	218
PDCN 106 – Property Bureau Invoice	216
PDCN 161 - Firearms Discharge Report	213
PDCN 199 – Medical Related Duty Status	
PO Bienz	303
PO DiLeonardo	221/278

PDCN 206 – Member Injury/Accident Report	
PO Bienz	287-289
PO DiLeonardo	268-270
PDCN 206A – Incident/Accident Statement	
PO Bienz	272/291
PO DiLeonardo	273/292
PDCN 428 – Supervisor’s Report of Member’s Action	
PO Bienz	290/302
PO DiLeonardo	271/274
Weapon Removal Report	
PO DiLeonardo	214-215
Newspaper Articles	344-348
Notice of Claim	234-236
Rivera, Anthony – Detective	
Interview of	98-99
Statement of	129
Signature Page	105
Suffolk County District Court	
Allocution	196-206
Suffolk County Police Department Forms	
Arrest Report	190
Crime Laboratory Report	139-177
Crime Scene Photographs	817-1006
Duty Chart PDSC 2004f	180
Felony Complaint	181
Field Report	222
Huntington Hospital Member Log	195
Impound Invoices	184-186
Impound Examination Request	189
Impound Release	187-188
Misdemeanor Complaint	182
Deposition	183
Property Sheet	219-220
Prosecution Worksheet	191
Scene Log – Huntington Hospital	178
Scene Log – Oakwood Road, Huntington	179
Supplemental Reports	
PO Rocchi	192
PO Faya	193
PO Meany	194

INTERNAL AFFAIRS UNIT
NASSAU COUNTY POLICE

IAU NUMBER 27- 2011

PAGE 1

SUMMARY:

On June 6, 2011 Deputy Inspector Edward Dordon, Serial Number 6387, Deputy Commanding Officer of Internal Affairs Unit, was directed by Acting Commissioner of Police Thomas Krumpter to commence an Internal Affairs investigation into an incident which occurred on February 27, 2011 in Huntington, New York, involving two off-duty Nassau County Police Officers. On February 27, 2011 Police Officer Anthony DiLeonardo, Serial Number 9013, Shield Number 3632, Third Precinct, and Police Officer Edward Bienz, Serial Number 8943, Shield Number 3466, Third Precinct, were involved in an alleged road rage incident which led to shots being fired by PO DiLeonardo in front of 422 Oakwood Road, Huntington, NY. Thomas Moroughan was struck by two bullets during this incident. Mr. Moroughan was charged criminally by the Suffolk County Police Department with violating New York State Penal Law Section 120.05 (03) Assault Second Degree and 120.20 Reckless Endangerment Second Degree.

(INVESTIGATOR'S NOTE: This investigation is an unusual Internal Affairs Unit case. Important points need to be clarified from the start. The case was assigned to the Internal Affairs Unit 99 days after it occurred. Most of the reports and materials were produced by the Suffolk County Police Department. The Suffolk County District Attorney's Office shared information that they gathered during their investigation. The Suffolk County Police Department's Internal Affairs Bureau conducted interviews of their involved members at our request. Many of this report's findings and conclusions are based upon the investigations conducted by these other agencies. On March 4, 2011 the Suffolk County District Attorney's Office informed the Suffolk County Police Department that they were taking over the investigation and Suffolk County Homicide Bureau was directed to stop investigating the incident.)

On June 6, 2011 the Suffolk County District Attorney's Office dismissed all charges against Mr. Moroughan pursuant to Section 170.30 Subdivision F of the

INTERNAL AFFAIRS UNIT
NASSAU COUNTY POLICE

IAU NUMBER 27- 2011

PAGE 2

New York State Criminal Procedure Law which states: ***Motion to dismiss, information, simplified information, prosecutor's information or misdemeanor complaint (f) there exists some other jurisdictional or legal impediment to conviction of the defendant for the offenses charged.*** Suffolk County Assistant District Attorney Raphael Pearl, Esq. stated at the hearing for the motion to dismiss all charges that; *a review of the evidence discloses a significant deficiency in the proof which would impact our ability to prove beyond a reasonable doubt the elements of the charges currently pending against the defendant. There is conflicting evidence surrounding the facts and circumstances which led to the discharge of a firearm by off-duty Police Officer Anthony DiLeonardo from Nassau County, as well as the actions of both parties thereafter.* There is an allegation that the Nassau County police officers may have been intoxicated at the time of this incident. A copy of the motion to dismiss is attached to the case.

Deputy Inspector Dordon generated a Blue Team and Complaint Tracking Number 185-2011 was assigned. On June 7, 2011 Inspector Neil Delargy, Serial Number 6828, Commanding Officer Internal Affairs Unit, assigned Detective Lieutenant Ralph Hoffman, Serial Number 6869, Shield Number 66, Internal Affairs Unit, and Detective Sergeant Jo-Ann Distler, Serial Number 6384, Shield Number 164, Internal Affairs Unit, to investigate.

On June 14, 2011 D/Lt. Hoffman and D/Sgt. Distler responded to 422 Oakwood Road, Huntington and canvassed the location of the shooting. They then responded to the Suffolk County District Attorney's Office located at building 77 North County Complex, Hauppauge, NY and met with Special Investigator (SI) Anthony Palumbo and Detective Investigator Paul Vitucci. SI Palumbo reported that he interviewed PO Anthony DiLeonardo, PO Edward Bienz, Jillian Bienz, the wife of PO Bienz, and Sophia Cornia, the girlfriend of PO DiLeonardo on April 29, 2011 at the office of Police Benevolent Association attorney Willard Miller Esq., 350 Old Country Road, Suite 106, Garden City, New York. SI Palumbo reported that all

INTERNAL AFFAIRS UNIT
NASSAU COUNTY POLICE

IAU NUMBER 27- 2011

PAGE 3

interviews were done separately with PBA Attorney Miller and PBA Representative Police Officer Michael Covais, Serial Number 6489, Third Precinct present. SI Palumbo reported that based upon a review of all reports, documents and interviews of witness' his investigation revealed that on February 27, 2011 at 1:15 a.m. PO DiLeonardo, his girlfriend Sophia Cornia, PO Bienz and his wife Jillian Bienz were on their way home after a night out. SI Palumbo reported that his investigation revealed that the evening began when the two couples met for dinner at approximately 8:30 pm on February 26, 2011 at The Black Forest Brew Haus located at 2015 New Highway in Farmingdale. The couples then proceeded to the Village of Huntington where they stopped for cocktails at Honu, 363 New York Avenue, Huntington, Huntington Village Tavern, 378 New York Avenue, Huntington and ended their night at the Artful Dodger, 30 New Street, Huntington.

SI Palumbo reported that when he interviewed PO Bienz, he stated that he consumed 3 beers at the Black Forest Brew Haus, 1 beer at Hanu, 1 beer at Huntington Village Tavern, and 1-2 beers at the Artful Dodger. SI Palumbo reported PO DiLeonardo stated that he consumed 2 Jameson and Pineapple drinks at the Black Forest Brew Haus, 1 Vodka and Cranberry at Hanu, 1 Jameson and Pineapple at Huntington Village Tavern, and he could not recall if he had a drink at the Artful Dodger. SI Palumbo reported that the couples headed home after leaving the Artful Dodger with PO Bienz driving his 2008 Acura leading PO DiLeonardo who was driving his girlfriend Sophia Cornia's 2011 Infiniti.

SI Palumbo reported that PO DiLeonardo was not familiar with the area and stated he was following PO Bienz to Jericho Turnpike where he would be able to find his way home. SI Palumbo reported that PO Bienz was traveling southbound on New York Avenue and made a wrong turn onto West Hills Road which changed into West 19th Street. Mr. Moroughan, who was driving a 2010 White Toyota Prius taxi cab with his girlfriend Kristie Mondo as a passenger somehow got his vehicle in between PO Bienz and PO DiLeonardo's vehicles. SI Palumbo reported his

INTERNAL AFFAIRS UNIT
NASSAU COUNTY POLICE

IAU NUMBER 27- 2011

PAGE 4

investigation revealed PO DiLeonardo may have flashed his high beams at Mr. Moroughan before passing the taxi in an aggressive manner. When PO Bienz got to the end of West 19th Street, he made a right turn onto Oakwood Road. Knowing that he was lost, PO Bienz pulled over to the side of the road with PO DiLeonardo stopping behind him. SI Palumbo reported that shortly thereafter, Mr. Moroughan pulled up next to PO DiLeonardo who was still seated in his vehicle. Mr. Moroughan rolled down the passenger window of his vehicle and began a verbal argument with PO DiLeonardo. PO DiLeonardo engaged in a heated verbal argument with Mr. Moroughan. Mr. Moroughan exited his vehicle, which was stopped in the northbound travel lane of Oakwood Road, and started walking towards the front of his vehicle. PO DiLeonardo exited his vehicle. Mr. Moroughan made it to the front driver's side of his vehicle while continuing to argue with PO DiLeonardo over the hood of the Prius. Mr. Moroughan returned to his vehicle and backed up approximately 100 feet. PO Bienz who had been seated in his vehicle heard the argument and exited his vehicle. PO DiLeonardo remained outside of his vehicle and began walking south towards the rear of the vehicle. SI Palumbo reported that PO DiLeonardo stated the Prius revved it's engine and began driving towards him at which time he shot at the vehicle 5 times with his Smith and Wesson .38 Special caliber revolver, model 36, Serial Number J654049 emptying the weapon. One bullet struck Mr. Moroughan in the left arm, one bullet struck Mr. Moroughan in the chest area and one bullet entered through the passenger compartment, perforating the folded-up armrest in the rear seat. The remaining two bullets were not recovered and it is unknown where they came to rest or if they struck anything.

SI Palumbo reported that the Prius moved forward a short distance before coming to a stop behind the Infiniti. SI Palumbo reported that PO DiLeonardo ran to the driver's door of the Prius, possibly with his police shield outside of his shirt and was possibly attempting to arrest Mr. Moroughan. Mr. Moroughan was seated in the driver's seat with his window up when PO DiLeonardo broke the window with the butt of his gun, shattering the window and striking Mr. Moroughan with the weapon

INTERNAL AFFAIRS UNIT
NASSAU COUNTY POLICE

IAU NUMBER 27- 2011

PAGE 5

numerous times, breaking his nose. PO DiLeonardo was able to open the door and was attempting to pull Mr. Moroughan out of the Prius when Mr. Moroughan reversed the Prius, knocking down PO DiLeonardo who had dropped his gun in the Prius. PO DiLeonardo received contusions and lacerations, indicated as 'road rash' on his medical reports. PO Bienz had begun approaching the Prius to assist PO DiLeonardo making it to the front driver's side corner panel of the Prius. PO Bienz was also knocked down when the Prius went into reverse. The Prius then made a U-turn and drove southbound on Oakwood Road. Mr. Moroughan drove himself to Huntington Hospital where he was treated for his injuries. PO DiLeonardo and PO Bienz were transported to Huntington Hospital by the Commack Volunteer Ambulance Corp. PO DiLeonardo and PO Bienz were treated for their injuries and released.

On February 27, 2011 Kristie Mondo was interviewed by Detective Alfred Ciccotto, Suffolk County Police Department Homicide Squad, at Huntington Hospital. A written statement was prepared and a copy is attached and made a part of the case.

Ms. Mondo stated on February 27, 2011 she was riding around with her boyfriend, Thomas Moroughan, in his taxi cab while he was working. Ms. Mondo stated at about 1:00 am they went to West 19th Street to pick up a fare when she noticed a blue Acura driving in front of them. Ms. Mondo stated she wasn't paying close attention but she noticed the blue Acura was driving erratically, weaving from side to side and her boyfriend put his high beams on. Ms. Mondo stated there was a white Infiniti behind them, and when her boyfriend turned on his high beams, the Infiniti started flashing his high beams on them. Ms. Mondo stated her boyfriend started driving slow to annoy the driver of the Infiniti and the Infiniti passed them. Ms. Mondo stated her boyfriend sped up as he was being passed to try and prevent the Infiniti from passing them, but the Infiniti was able to pass them. Ms. Mondo stated they were driving behind the two cars when they came to a red light at West

INTERNAL AFFAIRS UNIT
NASSAU COUNTY POLICE

IAU NUMBER 27- 2011

PAGE 6

19th Street and Oakwood Road. Ms. Mondo stated the two cars turned right on red but her boyfriend waited until the light turned green and then he made a right on Oakwood Road. Ms. Mondo stated they were heading north on Oakwood Road when they saw the two cars stopped on the right side of the road. Ms. Mondo stated her boyfriend started yelling at them to learn how to drive and everyone was cursing.

Ms. Mondo stated the blue Acura was parked on the right side of the road about 10-15 feet in front of them. Ms. Mondo stated she saw a man in an orange shirt standing in the road as her boyfriend was trying to do something with the gear shift. Ms. Mondo stated she wasn't sure if her boyfriend was moving forward or backwards because there was a lot of yelling and then the man in the orange shirt started shooting at them. Ms. Mondo stated she was seated in the front passenger's seat and she ducked down when she heard two shots. While she was down, she heard her boyfriend's window shatter and she looked up and saw the man with the orange shirt struggling with her boyfriend. Ms. Mondo stated the man was trying to drag her boyfriend out of the car and he said he was a cop and that her boyfriend was going to jail. Ms. Mondo stated that while her boyfriend was struggling with the man she believes she heard one more shot. Ms. Mondo stated she never saw the gun. Ms. Mondo stated her boyfriend put the car in reverse and started driving backwards with the man hanging onto the door when the man fell off and her boyfriend drove away. Ms. Mondo stated her boyfriend was bleeding and thought he was shot so he drove to Huntington Hospital and she called 911.

On February 27, 2011 at 7:00 am, Thomas Moroughan was interviewed at Huntington Hospital by Detective Ronald Taveres, Shield Number 457, and Detective Charles Leser, Shield Number 951 Suffolk County Police Department Homicide Squad. A written statement was prepared and a copy is attached and made a part of the case. Mr. Moroughan's statement includes his rights and waiver of rights which he acknowledged that he understood by initialing and signing. The statement was written by Det. Taveres and witnessed by Det. Leser. The statement

INTERNAL AFFAIRS UNIT
NASSAU COUNTY POLICE

IAU NUMBER 27- 2011

PAGE 7

was taken approximately 6 hours after the incident occurred, while Mr. Moroughan was under the influence of Morphine as a pain medication and after he was shot twice and had one bullet still in his chest and one in his left arm.

Mr. Moroughan stated on February 27, 2011 at approximately 1:00 am, he was driving a white Prius taxi for Dobro Express and he had his girlfriend Kristie Mondo with him in the front passenger's seat. Mr. Moroughan stated a blue Acura passed him and he got annoyed and flashed his high beams at the car. Mr. Moroughan stated he left his high beams on continually because he was mad at the way the guy was driving. Mr. Moroughan stated he was driving on West Hills Road when a white Infiniti came up behind him and flashed his bright lights at him. Mr. Moroughan stated the Infiniti passed him and he got angry and followed the cars. Mr. Moroughan stated he drove west on West 19th Street, then north on Oakwood Road. Mr. Moroughan stated he saw the blue Acura and white Infiniti parked on the side of Oakwood Road at Tippen Drive and he rolled down his passenger window and pulled next to the Infiniti and yelled "why don't you learn how to drive you fucking asshole." Mr. Moroughan stated the man cursed back at him and they got into a verbal argument. Mr. Moroughan stated he got out of his car and so did the men in the Infiniti and the Acura. Mr. Moroughan stated he got back in his car and backed it up as he was continuing to argue with the man in the Infiniti who started walking towards his car. Mr. Moroughan stated he revved his engine and drove forward towards the man who was standing in the street near the Infiniti. Mr. Moroughan stated he saw the man fire about 3 or 4 shots at his car and he felt that he had been struck. Mr. Moroughan stated he felt the man fired at him to protect himself because he drove at him. Mr. Moroughan stated the man then came up to his window and smashed it with his gun, hitting him in the face. Mr. Moroughan stated the man told him he was a police officer and that he was under arrest and to get out of his car. Mr. Moroughan stated he wasn't sure the man was a police officer and that they struggled and he drove backwards with his door was open which knocked down the man. Mr. Moroughan stated that when he went

INTERNAL AFFAIRS UNIT
NASSAU COUNTY POLICE

IAU NUMBER 27- 2011

PAGE 8

forward with his car he meant to go backwards but he had trouble shifting. Mr. Moroughan stated he drove to Huntington Hospital and his girlfriend called the police.

Upon being released from Huntington Hospital PO DiLeonardo, PO Bienz, Mrs. Bienz, and Ms. Cornia responded to the Suffolk County Police Department's, Second Precinct.

On February 27, 2011 Jillian Bienz was interviewed by Det. Ciccotto, Suffolk County Police Department Homicide Squad at the Suffolk County Police Department Second Precinct. A written statement was prepared and a copy is attached and made a part of the case.

Mrs. Bienz stated that on February 26, 2011 she was with her husband who was driving his blue Acura. Mrs. Bienz stated they were out with another couple, Anthony DiLeonardo and his girlfriend Sophia, who were following them in a white Infiniti which Mr. DiLeonardo was driving. Mrs. Bienz stated they were coming from the Artful Dodger, a bar in the Village of Huntington and she stated they all had a couple of drinks during the night, but she did not think her husband or Mr. DiLeonardo was intoxicated. Mrs. Bienz stated her husband was driving towards Jericho Turnpike when he made a wrong turn and he pulled over to the right side of the road on Oakwood Road opposite the Stimson Middle School. Mrs. Bienz stated that Mr. DiLeonardo pulled behind them and Mr. DiLeonardo got out of his car. Mrs. Bienz stated a taxi pulled up and stopped next to Mr. DiLeonardo's car and there was yelling and cursing between Mr. DiLeonardo and the people in the taxi.

Mrs. Bienz stated the taxi revved its engine and accelerated in reverse and stopped behind Mr. DiLeonardo's car. Mrs. Bienz stated her husband saw the car back up and got out of his car. Mrs. Bienz stated she also got out of their car. Mrs. Bienz stated she saw Mr. DiLeonardo holding something in his hand she thought

INTERNAL AFFAIRS UNIT

NASSAU COUNTY POLICE

IAU NUMBER 27- 2011

PAGE 9

may be his shield, but not his gun. Mrs. Bienz stated she saw Mr. DiLeonardo moving to the back of his car and he was yelling that he was a police officer and telling the driver to stop the taxi. Mrs. Bienz stated the taxi started accelerating towards Mr. DiLeonardo and he was yelling at the taxi and she heard gun shots. Mrs. Bienz stated she did not know how many shots she heard because she turned away and covered her head with her arms.

Mrs. Bienz stated Sophia started screaming and she moved towards her on the grass on the side of the road by the passenger side of Mr. DiLeonardo's car. Mrs. Bienz stated she looked up and saw the taxi in the middle of the road and her husband rolling down the middle of the street. Mrs. Bienz stated Mr. DiLeonardo was at the driver's window of the taxi and she was not sure if the taxi was moving. Mrs. Bienz stated she saw Mr. DiLeonardo moving towards her husband to see if he was okay, as the taxi backed up, made a u-turn and left.

Mrs. Bienz stated Mr. DiLeonardo called 911 immediately and they waited for the police to arrive. Mrs. Bienz stated she was not aware of any road rage incident.

On February 27, 2011 Sophia Cornia was interviewed by Det. Ciccotto, Suffolk County Police Department Homicide Squad at the Suffolk County Police Department Second Precinct. A written statement was prepared and a copy is attached and made a part of the case.

Ms. Cornia stated on February 26, 2011 she was out with her boyfriend Anthony DiLeonardo, and another couple, Edward Bienz and his wife Jill. Ms. Cornia stated Mr. Bienz was driving a blue Acura and her boyfriend was driving her white Infiniti. Ms. Cornia stated they went out to dinner and then went to the Village of Huntington. Ms. Cornia stated they left the Artful Dodger around 12:30 am and her boyfriend Anthony drove her car while following the Bienz's car. Ms. Cornia stated Mr. Bienz pulled over to the side of the road and Anthony pulled behind him

INTERNAL AFFAIRS UNIT
NASSAU COUNTY POLICE

IAU NUMBER 27- 2011

PAGE 10

and got out of his car. Ms. Cornia stated that she saw a white Prius taxi pull up and stop next to her car and the taxi driver began exchanging words with Anthony. Ms. Cornia stated Mr. Bienz and Mrs. Bienz got out of their car and started walking towards Anthony. Ms. Cornia stated Mrs. Bienz was on the passenger side of the cars on the grass area. Ms. Cornia stated she saw the taxi back up aggressively, take a position behind her car and rev its engine as Anthony moved between her car and the taxi. Ms. Cornia stated she saw Anthony was holding his shield that he keeps on a chain around his neck. Ms. Cornia stated that she got out of her car and was on the grass by Ms. Bienz when she heard Anthony say something, but she could not recall what he was saying. Ms. Cornia stated she was standing at the side of her car when she heard gun shots. Ms. Cornia stated she did not see Anthony with a gun and she did not know who was shooting because she was not facing the cab. Ms. Cornia stated and she thought Anthony may have been shot. Ms. Cornia stated she saw the taxi make a u-turn and drive away. Ms. Cornia stated that Anthony called 911 and told the dispatcher that the cab driver took his gun. Ms. Cornia stated that Anthony was not intoxicated.

On February 27, 2011 PO DiLeonardo was interviewed by Det. Leser, Suffolk County Police Department Homicide Squad. A written statement was prepared and a copy is attached and made a part of the case.

PO DiLeonardo reported that on February 27, 2011 he was stopped on the side of the road when Mr. Moroughan pulled up in a taxi and started yelling at him. PO DiLeonardo stated that Mr. Moroughan started to get out of his vehicle so he got out of his vehicle and they continued to argue when Mr. Moroughan backed up his vehicle and then accelerated toward him. PO DiLeonardo stated that he thought Mr. Moroughan was going to hit him with the car so he shot him. PO DiLeonardo stated that when Mr. Moroughan stopped the car, he went to his door and identified himself as a police officer and told him he was under arrest. PO DiLeonardo stated that when he was trying to arrest Mr. Moroughan he backed up his car causing the

INTERNAL AFFAIRS UNIT
NASSAU COUNTY POLICE

IAU NUMBER 27- 2011

PAGE 11

driver's door to hit him, knocking him down causing multiple contusions and lacerations for which he was treated at Huntington Hospital.

On February 27, 2011 Mr. Moroughan was placed under arrest by the Suffolk County Police Department Homicide Squad for one count of Section 120.05 Subdivision 03, Assault Second Degree, and one count of 120.20, Reckless Endangerment, Second Degree, of the New York State Penal Law.

The following reports are attached and made a part of this case:

- Suffolk County Shooting Incident Reconstruction Report, prepared by Forensic Scientist George Krivosta.
- Printout of Suffolk County Police Department 911 calls
- Scene Log (Huntington Hospital)
- Scene Log (422 Oakwood Road, Huntington)
- Felony Complaint
- Misdemeanor Complaint
- Vehicle Impound Invoice 2011 Infiniti 11-0347
- Vehicle Impound Invoice 2008 Acura 11-0348
- Vehicle Impound Invoice 2010 Toyota Prius
- Suffolk County Police Department Arrest Report 006393-11
- Suffolk County Police Department Prosecution Worksheet
- Statement of PO DiLeonardo 2/27/11 taken by Det. Leser, SCPD
- Statement of Thomas Moroughan dated 2/27/11 taken by Det. Leser, SCPD
- Statement of Kristie Mondo, dated 2/27/11 taken by Det. Ciccotto, SCPD
- Statement of Jillian Bienz, dated 2/27/11 taken by Det. Ciccotto, SCPD
- Statement of Sophia Cornia, dated 2/27/11 taken by Det. Ciccotto, SCPD

INTERNAL AFFAIRS UNIT
NASSAU COUNTY POLICE

IAU NUMBER 27- 2011

PAGE 12

- Suffolk County Police Department Supplementary Report of PO Channon Rocchi, Shield Number 5767
- Suffolk County Police Department Supplementary Report of PO Jesus Faya, Shield Number 4917
- Suffolk County Police Department Supplementary Report of PO William Meany, Shield Number 4315

D/Sgt. Distler received and reviewed a copy of all 911 calls relating to the shooting incident from SI Palumbo. On February 27, 2011 at approximately 1:15 am, the following 911 calls were received by the Suffolk County Police Department:

- Mr. Timothy Jochen, 191 West 19th Street, Huntington called 911 two times and reported he heard 5 gun shots coming from the Stimson Middle School on Oakwood Road. (**INVESTIGATOR'S NOTE:** Mr. Jochen resided around the corner from 422 Oakwood Road.)
- Mr. Eric Klug, 422 Oakwood Road Huntington called 911 and reported someone had just got shot in the street in front of 422 Oakwood Road. Mr. Klug reported that he was inside his house and saw someone shooting at a white car. Mr. Klug stated that he heard multiple gun shots and he thought someone got hit. Mr. Klug stated he saw two vehicles and he saw a guy come out shooting at a white vehicle. Mr. Klug stated they were speeding away and he thought someone might have been struck by the car.
- PO DiLeonardo called 911 and reported he was an off-duty Nassau County police officer and he was involved in a shooting at Tippen and Oakwood. PO DiLeonardo was upset and was requesting a 10-78 (**INVESTIGATOR'S NOTE:** 10-78 is the Nassau County Police Department radio code for Police Officer in Danger.) PO DiLeonardo requested units to respond forthwith and he stated numerous times that "they" stole his gun. PO DiLeonardo stated that a white Toyota Prius taxi cab tried to "run him" and left opposite his direction which he was unable to convey to the 911 operator. Approximately

INTERNAL AFFAIRS UNIT
NASSAU COUNTY POLICE

IAU NUMBER 27- 2011

PAGE 13

1:40 seconds into the call, PO DiLeonardo became calm, stating he was bleeding, that he needed an ambulance and he did not know if he was shot. PO DiLeonardo is heard telling PO Bienz to get on the sidewalk and asking PO Bienz which direction they were going.

- Ms. Kristie Mondo called 911 to report that a guy in an orange shirt driving either a blue Acura or a white Infiniti just shot her boyfriend possibly in his arm and he was bleeding. Ms. Mondo stated the shooting occurred in front of the Stimson Middle School but her boyfriend was driving himself to Huntington Hospital. Ms. Mondo stated she thought the guy who shot her boyfriend said he was a cop and that he was driving like an asshole, erratically.

On June 14, 2011 D/Lt. Hoffman, D/Sgt. Distler and Detective Lieutenant Thomas Meagher, Serial Number 7343, Shield Number 244, Medical Administration Office responded to 168 Toronto Avenue, Massapequa, home of PO DiLeonardo and removed all weapons registered to and owned by PO DiLeonardo. All weapons were invoiced to NCPD Property Bureau under MAO Invoice Voucher # 11-11. Weapon Removal Report, PDCN Form 106, and PDCN Form 199 (Medical Related Duty Status Report) attached and made a part of the case. On June 15, 2011, Suffolk County Police Department Property Section was contacted by D/Sgt. Distler and a hold was placed on PO DiLeonardo's Smith and Wesson .38 caliber revolver which was used in the shooting and invoiced by SCPD under CC# 11-0095045.

On May 26, 2011 a Notice of Claim was served on The County of Nassau, Police Officer Anthony DiLeonardo and Nassau County Police Officers John Does 1-10, and The County of Suffolk, Detective Charles E. Lesser II, PO William J. Lamb and Suffolk County Police Officers John Does 1-10. On June 15, 2011 D/Sgt. Distler contacted the Suffolk County Police Department's Internal Affairs Bureau and was informed that Sergeant Kelly Lynch was assigned to investigate the Notice of Claim